HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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Writ Petition No. 15736 of 2005

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Dated: 28th November, 2005

Between:

M/s. Rahul Constructions, Santhi Nagar, Kakinada, East Godavari District, rep. by its Prop.K.Bheemeswar Rao.

..... PETITIONER

AND

1.The Chief Administrative Officer, Construction, South Central

Railway, Secunderabad and others.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No. 15736 of 2005

ORDER:

This writ petition has been filed by M/s. Rahul Constructions, represented by its Prop.K.Bheemeswar Rao assailing the action of the respondents in withholding the seigniorage charges on ordinary earth pursuant to letter No.W.44/B.Vol.IV, dated 25.06.2004 from the bills payable to it in respect of Contract Agreement No.39/CAO/C/SC/2004, dated 24.03.2004.

2. Heard learned counsel for the petitioner and learned Standing Counsel appearing for the respondents.

3. Learned counsel appearing for the petitioner submits that the issue involved in

this writ petition has been covered by the various decisions of this Court and it is no more *res integra*.

4. Learned Standing Counsel appearing for the respondents submits that the writ petition is liable to be dismissed on three grounds, viz., *firstly*, the agreement contained the clause with regard to deduction of seigniorage charges; *Secondly*, in case of disputes, they are required to be referred to the arbitrator; and *thirdly*, for non-joinder of necessary party i.e., the State Government, to the proceedings.

5. With regard to the first submission made by the learned Standing Counsel appearing for the respondents, it is relevant to refer the letter dated 17.09.2004 of the Department, which reads as follows:

> "Now, in view of G.O.No.331, dated 21-5-2000 and G.O.No.466 dated 24-8-2000 issued by Government of Andhra Pradesh, wherein the rates of seigniorage charges applicable Mines and Minerals including stone ballast, earth, moorom etc., have been prescribed and in view of policy decision issued by CGE vide letter No.W/44/B/IV, dated 25-6-2004, it has been decided to that in the future tenders, the following specific clause will be added as sub-para of the main para "Taxes" in the tender conditions where items of earth work blanketing are involved in the schedule:-
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> "Seigniorage charges on supply of earth, moorom, sand and other minerals as fixed by the State Government and payable to them is revised from time to time during the currency of contract will be recovered by railways from the contractor's on account and final bills and remitted to the State Government. The rate quoted by the tenderer shall be inclusive of these charges. Claims regarding revision of seigniorage charges and consequently enhancement of the accepted rate will not be entertained.
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> The above instructions should be followed immediate effect".

6. The Department also clarified in its letter dated 15.12.2004 that in case of agreements where no specific clause is provided for recovery of seigniorage charges on earth by Railways from the contractor's on account bills, the same is not required to be recovered from the contractor's bill. But all the details may be given to the State Government on demand, so that, if required, State Government can recover the seigniorage charges directly from the contractors.

7 . It is apparent from the above referred letter that unless a specific clause is included in the contract with regard to the collection of seigniorage charges on earth, no such deductions are required to be made.

8. In view of the above letters, I do not see any substance in the first submission made by the learned Standing Counsel appearing for the respondents. With regard to the second submission i.e., remedies in case of disputes between the contractor and the department, there is no dispute for adjudication since the department itself issued instructions not to recover the amounts from the bills payable to the contractor for supply of ballast, earth, moorom and other minerals. There is no specific clause with regard to the collection of the seigniorage charges on earth in the agreements executed by the petitioners. With regard to the third submission; admittedly the dispute is between the contractor and the Department and therefore, the State Government is not a necessary party.

9. Similar question came up for consideration in W.P.Nos.21401 of 2004 and batch dated 23.03.2005 with regard to the right of the department to deduct the seigniorage charges on earth from the bills payable to the contractors. It has been held in the above batch of writ petitions as follows.

> "Having regard to the submissions made by both the parties and in the light of the material on record particularly the letter dated 15.12.2004, extracted above, it is clear that the respondents having considered the request of the contractors, have decided not to recover the seigniorage charges from the contractor's on account bills in case there is no specific clause for recovery of seigniorage charges on supply of earth or moorom etc. They have also made it clear that for all future tenders or contracts, the specific clause to that effect shall be incorporated. By virtue of the said letter, the earlier letter dated 25.06.2004 under which instructions were issued to deduct the seigniorage charges from the bills of the contractors stood superseded".

10. The issue involved in this writ petition is squarely covered by the order passed in the above batch of writ petitions.

11. Accordingly, the writ petition is disposed of directing the respondents not to withhold any seigniorage charges on ordinary earth from the final bills of the petitioner in respect of the works entrusted to it under the agreement in question. However, if the amounts are already deducted, it is for the petitioner to work out the appropriate remedy for refund of the same. It is also made clear that this shall not preclude the State Government to recover the seigniorage charges directly from the petitioner, in case any such decision is taken, following due process of law. No order as to costs.

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B.SESHASAYANA REDDY, J.

Dated: 28th November, 2005.

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